

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

DISABILITY RIGHTS MISSISSIPPI,)	
)	
Plaintiff,)	
v.)	Case No. 2:11cv53-KS-MTP
)	
FORREST COUNTY, MISSISSIPPI,)	
)	
Defendant.)	
)	

PLAINTIFF/CROSS-DEFENDANT’S MOTION TO DISMISS
PURSUANT TO RULES 12(B)(1) & 12(B)(6)

COMES NOW Plaintiff/Cross-Defendant Disability Rights Mississippi (hereinafter “DRMS”) and moves to dismiss this suit for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), and alternatively, for failure to state a claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6). In support of this motion, DRMS offers the following:

1. Plaintiff/Cross-Defendant DRMS is the Protection and Advocacy system for the state of Mississippi and is empowered by federal law to provide protection and advocacy services to individuals with disabilities within the state, including, but not limited to, youth confined in juvenile detention centers.
2. Defendant/Cross-Claimant Forrest County (hereinafter “Forrest County”) is the governmental entity responsible for establishing and maintaining the Forrest County Juvenile Detention Center.
3. On March 7, 2011, DRMS filed a complaint and motion for a preliminary injunction against Forrest County, seeking access to the Juvenile Detention Center and its facilities, staff and detained youth. (Compl., March 7, 2011, ECF No. 1)

4. On March 22, 2011, Forrest County filed an answer to the complaint and also filed a cross-claim for declaratory judgment asking that the Court to issue an advisory opinion to answer six broad questions interpreting federal law. (Answer and Cross-cl., March 22, 2011, ECF No. 6)

5. Forrest County's cross-claim should be dismissed, because the cross-claim fails to assert a justiciable case or controversy and therefore this Court lacks subject matter jurisdiction.

6. Forrest County also fails to allege any present or future injury traceable to DRMS and thus lacks standing to seek declaratory relief against DRMS. Therefore, their cross-claim should be dismissed.

7. Further, the cross-claim fails to state any claim against DRMS upon which relief can be granted, is a redundant waste of judicial resources, and should be dismissed.

8. In support of this motion, DRMS relies upon the following documents:

A. DRMS's Complaint, March 7, 2011, ECF No. 1.

B. Forrest County's Answer and Cross-claim, March 22, 2011, ECF No. 6.

Exhibit A: Memorandum of Law in Support of Plaintiff/Cross-Defendant's Motion to Dismiss Pursuant to Rules 12(b)(1) & 12(b)(6) (filed concurrently).

WHEREFORE, DRMS respectfully requests that the Court dismiss Forrest County's cross-claim with prejudice and order any other relief this Court deems appropriate

This 8th day of April, 2011.

Respectfully submitted,

/s/ Jody E. Owens II
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CERTIFICATE OF SERVICE

I, Jody E. Owens, II, Attorney for the Plaintiff, do hereby certify that on April 8, 2011, I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of such filing to the below-named individuals. I also hereby certify that on April 8, 2011, I sent each of the below-named individuals a true and complete copy by first class U.S. Mail, postage prepaid:

James K. Dukes, Jr.
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David B. Miller
Attorney for Defendant, Forrest County
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This 8th day of April, 2011.

/s/ Jody E. Owens II
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